

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL C. BOLIN,

Petitioner,

v.

RACHAEL NEWCOMB,

Respondents, et al.,

No. 2:24-cv-0413 CKD P

ORDER AND

FINDINGS AND RECOMMENDATIONS

Petitioner is a California prisoner proceeding pro se. On February 14, 2024, the court dismissed petitioner's 28 U.S.C. § 2254 petition for a writ of habeas corpus with leave to amend. Petitioner filed an amended petition on March 4, 2024.

Under Rule 4 of the Rules Governing Section 2254 Cases, the court must review all petitions for writ of habeas corpus and summarily dismiss any petition if it is plain that the petitioner is not entitled to relief. The court has conducted that review.

A petition for a writ of habeas corpus by a person in custody under a judgment of a state court can be granted only for violations of the Constitution or laws of the United States. 28 U.S.C. § 2254(a). Petitioner takes issue with proceedings before the California Supreme Court. However, he fails to point to anything suggesting that he is in custody in violation of federal law. In order to obtain a writ of habeas corpus, petitioner would need to show that his conviction and / or sentence violate federal law, not simply that California Supreme Court proceedings were

1 flawed. Because petitioner does not state an actionable § 2254 claim, his amended petition must
2 be dismissed.

3 The court notes petitioner has requested leave to proceed in forma pauperis. Because
4 petitioner paid the filing fee, this request will be denied.

5 Finally, petitioner has filed a motion to vacate his sentence under 28 U.S.C. § 2255 and a
6 request for an evidentiary hearing as to that motion. Relief under 28 U.S.C. § 2255 can only be
7 sought by federal prisoners. Petitioner's § 2255 motion filed in this action is not appropriate, so
8 the court will strike the motion and request for an evidentiary hearing.

9 Accordingly, IT IS HERBY ORDERED that:

10 1. Petitioner's request for leave to proceed in forma pauperis (ECF No. 7) is denied as
11 moot as petitioner has paid the filing fee;

12 2. Petitioner's motion to vacate his sentence under 28 U.S.C. § 2255 and request for an
13 evidentiary hearing (ECF No. 6) are stricken;

14 3. The Clerk of the Court assign a district court judge to this case.

15 IT IS HEREBY RECOMMENDED that petitioner's petition for a writ of habeas corpus
16 be summarily dismissed.

17 These findings and recommendations are submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
19 after being served with these findings and recommendations, petitioner may file written
20 objections with the court. Such a document should be captioned "Objections to Magistrate
21 Judge's Findings and Recommendations." In his objections petitioner may address whether a
22 certificate of appealability should issue in the event he files an appeal of the judgment in this
23 case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district court must issue or
24 deny a certificate of appealability when it enters a final order adverse to the applicant). Where, as
25 here, a habeas petition is dismissed on procedural grounds, a certificate of appealability "should
26 issue if the prisoner can show: (1) 'that jurists of reason would find it debatable whether the
27 district court was correct in its procedural ruling;' and (2) 'that jurists of reason would find it
28 debatable whether the petition states a valid claim of the denial of a constitutional right.'" Morris

1 v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 484
2 (2000)). Petitioner is advised that failure to file objections within the specified time may waive
3 the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

4 Dated: April 22, 2024



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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